

## **SUPPLEMENTAL AGENDA ITEM 10**

### **Major Projects Policy Committee**

**September 10, 2009, 9:00 a.m.**

Location:

Super Chief Conference Room

1170 W. 3<sup>rd</sup> St., San Bernardino

### **Discussion Calendar**

#### **Transportation Planning & Programming Program**

**10. Model Project Funding Agreement for use in the Measure I 2010-2040 Valley Freeway Interchange Program, Valley Grade Separation Sub-program, and Mountain/Desert Major Local Highways Programs**

Approve the Model Project Funding Agreement for use in the Measure I 2010-2040 Valley Freeway Interchange Program, Valley Grade Separation Sub-program, and Mountain/Desert Major Local Highways Programs (Attachment 1 – to be provided under separate cover). **Ty Schuiling**

*Attachment 1 was not available at the time of agenda distribution.*

**ATTACHMENT 1: Model Project Funding Agreement**

**PROJECT FUNDING AGREEMENT NO. \_\_\_\_\_  
BETWEEN**

**SAN BERNARDINO COUNTY TRANSPORTATION AUTHORITY**

**AND**

**CITY/COUNTY OF \_\_\_\_\_**

**FOR**

**\_\_\_\_\_ (Phase of the project) \_\_\_\_\_ for a \_\_\_\_\_ (Project) \_\_\_\_\_ in  
the City/County of \_\_\_\_\_**

THIS AGREEMENT is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_ by and between the San Bernardino County Transportation Authority (hereinafter referred to as "SANBAG") and the City/County of \_\_\_\_\_ (hereinafter referred to as "CITY/COUNTY").

**WITNESSETH**

WHEREAS, the Measure I 2010-2040 Expenditure Plan, the SANBAG Nexus Study, and planning conducted by the rural Mountain/Desert subareas identified freeway interchange, major street, and rail-highway grade separation projects eligible for partial funding from Measure I 2010-2040 revenues; and

WHEREAS, this Project Funding Agreement is to be carried out in accordance with the policies in the Measure I 2010-2040 Strategic Plan; and

WHEREAS, SANBAG has determined that this PROJECT and expenditure phase are included in the SANBAG Nexus Study or are approved by the SANBAG Mountain/Desert Committee and are eligible to receive Measure I 2010-2040 funds; and

WHEREAS, CITY/COUNTY wishes to be the lead agency on the \_\_\_\_\_ Phase of the project \_\_\_\_\_; and

WHEREAS, SANBAG and CITY/COUNTY are entering into this Agreement with the understanding that SANBAG will reimburse CITY/COUNTY for eligible PROJECT expenditures with Measure I 2010-2040 funds;

NOW, THEREFORE, SANBAG and CITY/COUNTY agree to the following:

## SECTION I

### SANBAG AGREES:

1. To reimburse CITY/COUNTY for those eligible PROJECT expenses that are incurred by CITY/COUNTY for the PROJECT-specific work activities, as set forth in Attachment A to this Agreement and as governed by the policies in the Measure I 2010-2040 Strategic Plan. Said reimbursement amount shall not exceed \_\_\_\_\_, which represents \_\_\_\_\_% of estimated costs for the PROJECT as stated in Attachment A. Amendments to this reimbursement amount may be made by mutual agreement between SANBAG and CITY/COUNTY.
2. To reimburse CITY/COUNTY, subject to Article 1 of this Section I, on a monthly basis and after CITY/COUNTY submits to SANBAG an original and two copies of the signed invoices in the proper form covering those actual allowable PROJECT expenditures that were incurred by CITY/COUNTY, consistent with the invoicing requirements of the Measure I 2010-2040 Strategic Plan, including backup information.
3. When conducting an audit of the costs claimed under the provisions of this Agreement, to rely to the maximum extent possible on any prior audit of CITY/COUNTY performed pursuant to the provisions of State and Federal laws. In the absence of such an audit, work of other auditors will be relied upon to the extent that work is acceptable to SANBAG when planning and conducting additional audits.

## SECTION II

### CITY/COUNTY AGREES:

1. Subject to Article 1 of Section I, that only eligible PROJECT-specific work activities, as set forth in Attachment A to this Agreement, which are for transportation purposes that conform to the SANBAG Nexus Study (or for rural Mountain/Desert subareas, are approved by the SANBAG Mountain/Desert Committee), will be eligible for Measure I reimbursement. CITY/COUNTY agrees that it will only request reimbursement for eligible PROJECT-specific work activities.
2. To abide by all SANBAG, State and, if applicable, Federal policies, regulations, and procedures pertaining to the PROJECT, including policies pertaining to the PROJECT in the Measure I 2010-2040 Strategic Plan.

3. To prepare and submit to SANBAG an original and two copies of signed invoices for reimbursement of those eligible PROJECT expenses according to the requirements specified in Attachment A. CITY/COUNTY further agrees and understands that SANBAG will not reimburse CITY/COUNTY for any PROJECT expenditures that are not described in the PROJECT-specific work activities.
4. To repay to SANBAG any reimbursement for Measure I costs that are determined by subsequent audit to be unallowable within thirty (30) days of CITY/COUNTY receiving notice of audit findings. Should CITY/COUNTY fail to reimburse moneys due SANBAG within (30) days of demand, or within such other period as may be agreed between both parties hereto, SANBAG reserves the right to withhold future payments due CITY/COUNTY from any source under SANBAG's control.
5. That the \_\_% share of funding for which CITY/COUNTY is responsible will come from CITY's development impact fees or other source of development contribution as required by the Development Mitigation Nexus Study (Appendix K of the SANBAG Congestion Management Program – CMP) and Appendix J of the CMP or from a loan of funds to the CITY's/COUNTY's development impact fee account.
6. (This paragraph applies only if the project is an interchange with development mitigation responsibility shared among two or more jurisdictions) To execute and maintain a development mitigation cooperative agreement with \_\_\_\_\_ for its share of development mitigation as required by the SANBAG Measure I 2010-2040 Strategic Plan, and to be responsible for collecting the development mitigation based on that agreement.
7. To maintain all source documents, books and records connected with its performance under this Agreement for a minimum of five (5) years from the date of the Final Report of Expenditures submittal to SANBAG or until audit resolution is achieved and to make all such supporting information available for inspection and audit by representatives of SANBAG. Copies will be made and furnished by CITY/COUNTY upon request, but in no case less than five (5) years from the date of final reimbursement payment, if said reimbursement occurs under this Agreement.
8. To establish and maintain an accounting system conforming to Generally Accepted Accounting Principles (GAAP) to support CITY/COUNTY request for reimbursement, payment vouchers, or invoices which segregate and accumulate costs of PROJECT work elements and produce monthly reports which clearly identify reimbursable costs, matching fund costs, indirect cost allocation (based on an approved indirect cost allocation plan), and other allowable expenditures by CITY/COUNTY.

9. To prepare a Final Report of Expenditures, including a final invoice reporting the actual eligible PROJECT costs expended for those activities described in the work activities, and to submit that Report and invoice no later than 60 days following the completion of those expenditures. The Final Report of Expenditures, an original and two copies of which report shall be submitted to SANBAG, must state that these PROJECT funds were used in conformance with this Agreement and for those PROJECT-specific work activities described.
10. To have a PROJECT-specific audit completed by SANBAG, at SANBAG's option, upon completion of the PROJECT. The audit must state that all funds expended on the PROJECT were used in conformance with this Agreement.
11. To include SANBAG in Project Development Team (PDT) meetings and related communications on project progress and to provide at least quarterly schedule updates to SANBAG. SANBAG contact shall be \_\_\_\_\_(title).
12. To post signs when PROJECT begins construction on ends of PROJECT noting that PROJECT is funded with Measure I funds. Signs shall bear the logos of San Bernardino Associated Governments and CITY/COUNTY of \_\_\_\_\_.

### SECTION III

#### IT IS MUTUALLY AGREED:

1. SANBAG's financial responsibility shall not exceed \_\_\_\_% of eligible expenditures as listed in Attachment A.
2. Eligible PROJECT reimbursements shall include only those costs incurred by CITY/COUNTY for PROJECT-specific work activities that are described in this Agreement and shall not include escalation, interest, or other fees.
3. Neither SANBAG nor any officer or employee thereof is responsible for any injury, damage or liability occurring or arising by reason of anything done or omitted to be done by CITY/COUNTY under or in connection with any work, authority or jurisdiction delegated to CITY/COUNTY under this Agreement. It is understood and agreed that, pursuant to Government Code Section 895.4, CITY/COUNTY shall fully defend, indemnify and save harmless SANBAG, its officers and employees from all claims, suits or actions of every name, kind and description brought for or on account of injury (as defined by Government Code Section 810.8) occurring by reason of anything done or omitted to be done by CITY/COUNTY under or in connection with any work, authority or jurisdiction delegated to CITY/COUNTY under this Agreement.

4. This Agreement is expressly subordinated to any bonds, notes, certificates or other evidences of indebtedness as are now outstanding or as may hereafter be issued by SANBAG.
5. This Agreement will be considered terminated upon reimbursement of eligible costs by SANBAG. The Agreement may also be terminated by SANBAG, in its sole discretion, in the event contracts for the project work described in Attachment A have not been let by CITY/COUNTY within twelve (12) months of the date of execution of this Agreement and if CITY/COUNTY fails to diligently proceed with the project work.
6. The terms of this Agreement represent the consent of the CITY/COUNTY to provide the full development share for the PROJECT required by the SANBAG Nexus Study and that failure to contribute the development share according to the terms of this agreement does not obligate SANBAG to provide supplemental funds or otherwise remedy that failure. SANBAG may terminate or modify this agreement if the CITY/COUNTY fails to perform according to the terms of this Agreement and if this failure jeopardizes the delivery of the PROJECT according to the terms herein.

**San Bernardino County  
Transportation Authority**

**CITY/COUNTY of**

By: \_\_\_\_\_

President, SANBAG Board of  
Directors

By: \_\_\_\_\_

Mayor

Date: \_\_\_\_\_

Date: \_\_\_\_\_

APPROVED AS TO FORM AND  
PROCEDURE:

APPROVED AS TO FORM AND  
PROCEDURE:

By: \_\_\_\_\_

Jean-Rene Basle  
SANBAG County Counsel

By: \_\_\_\_\_

CITY/COUNTY Attorney

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**Attachment A**

**(Project Description)**

**Project Scope, Cost, and Schedule**

**Proposed Project Work:**

**Summary of Project Costs (Estimate):**

**Total Project Cost    \$**

**Proposed Project Schedule (milestone delivery dates):**



## **SUPPLEMENTAL AGENDA ITEM 11**

### **Major Projects Policy Committee**

**September 10, 2009, 9:00 a.m.**

Location:

Super Chief Conference Room  
1170 W. 3<sup>rd</sup> St., San Bernardino

### **Discussion Calendar**

#### **Transportation Planning & Programming Program**

**11. Model Advance Expenditure Agreement for the Measure I 2010-2040 Valley Freeway Interchange Program, Valley Rail-Highway Grade Separation Sub-program, and Victor Valley Major Local Highways Program**

Approve the Model Advance Expenditure Agreement for the Measure I 2010-2040 Valley Freeway Interchange Program, Valley Rail-Highway Grade Separation Sub-program, and the Victor Valley Major Local Highways Program (Attachment 1 – to be provided under separate cover). **Ty Schuiling**

*Attachment 1 was not available at the time of agenda distribution.*

**ATTACHMENT 1: Model Advance Expenditure Agreement**

**ADVANCE EXPENDITURE AGREEMENT NO. \_\_\_\_\_  
BETWEEN**

**SAN BERNARDINO COUNTY TRANSPORTATION AUTHORITY**

**AND**

**CITY/COUNTY OF \_\_\_\_\_**

**FOR**

**\_\_\_\_\_ (Phase of the project) \_\_\_\_\_ for a \_\_\_\_\_ (Project) \_\_\_\_\_ in  
the CITY/COUNTY of \_\_\_\_\_**

THIS AGREEMENT is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_ by and between the San Bernardino County Transportation Authority (hereinafter referred to as "SANBAG") and the City/County of \_\_\_\_\_ (hereinafter referred to as "CITY"/"COUNTY").

**WITNESSETH**

WHEREAS, the Measure I 2010-2040 Expenditure Plan, the SANBAG Nexus Study, and planning conducted by the rural Mountain/Desert subareas identified freeway interchange, arterial highway, and rail-highway grade separation projects eligible for partial funding from Measure I 2010-2040 revenues; and

WHEREAS, this Advance Expenditure Agreement is to be carried out in accordance with the policies in the Measure I 2010-2040 Strategic Plan; and

WHEREAS, SANBAG has determined that this PROJECT and expenditure phase are included in the SANBAG Nexus Study or, are approved by the SANBAG Mountain/Desert Committee and are eligible to receive Measure I 2010-2040 funds; and

WHEREAS, CITY/COUNTY wishes to begin \_\_\_\_\_ phase of the PROJECT prior to Measure I funds being available for this project; and

WHEREAS, SANBAG and CITY/COUNTY are entering into this Agreement with the understanding that SANBAG will reimburse CITY/COUNTY for eligible PROJECT expenditures with Measure I 2010-2040 funds or other funds under SANBAG control according to Measure I Strategic Plan Policies 40002 or 40011, as applicable; and

WHEREAS, since revenue from Measure I 2010-2040 is limited, SANBAG and CITY/COUNTY are entering into this Agreement which will allow CITY/COUNTY to use its own funds to implement the PROJECT in advance of an allocation of Measure I funds, with the understanding that SANBAG will reimburse CITY/COUNTY for SANBAG share of eligible PROJECT expenditures at a later date in accordance with the Advance Expenditure Agreement (AEA) reimbursement policy in the Measure I 2010-2040 Strategic Plan policy 40002 or 40011, as applicable (POLICY).

NOW, THEREFORE, SANBAG and CITY/COUNTY agree to the following:

## SECTION I

### SANBAG AGREES:

1. To reimburse CITY/COUNTY for \_\_\_\_\_ phase of those eligible PROJECT expenses that are incurred by CITY/COUNTY for the PROJECT specific work activities, as set forth in Attachment A to this Agreement and as governed by the policies in the Measure I 2010-2040 Strategic Plan. Said reimbursement amount shall be \_\_\_\_\_% of actual cost but shall not exceed \_\_\_\_\_, which represents \_\_\_\_\_% of estimated costs for the PROJECT as stated in Attachment A. Amendments to this reimbursement amount may be made by mutual agreement between SANBAG and CITY/COUNTY.
2. Reimbursement for projects in the Valley and Victor Valley may also be taken as credit for the same amount against the development share of one or more subsequent projects within the same Measure I program. The credit may not be taken sooner than the reimbursement would have otherwise been made for the PROJECT. SANBAG shall begin accounting for the credit upon receipt by the SANBAG Executive Director of a resolution by the City Council/Board of Supervisors that reimbursement be through a credit process. The advanced funds shall have been from a development mitigation source in order for the credit to be earned.
3. To reimburse CITY/COUNTY, subject to Article 1 of this Section I, in accordance with the POLICY and after CITY/COUNTY submits to SANBAG an original and two copies of the signed invoices in the proper form covering those actual allowable PROJECT expenditures that were incurred by CITY/COUNTY.
4. When conducting an audit of the costs claimed under the provisions of this Agreement, to rely to the maximum extent possible on any prior audit of CITY/COUNTY performed pursuant to the provisions of State and Federal laws. In the absence of such an audit, work of other auditors will be relied upon to the extent that work is acceptable to SANBAG when planning and conducting additional audits.

## SECTION II

### CITY/COUNTY AGREES:

1. That only eligible PROJECT-specific work activities, as set forth in Attachment A to this Agreement, which are for transportation purposes that conform to the SANBAG Nexus Study (or for rural Mountain/Desert subareas, are approved by the SANBAG Mountain/Desert Committee) will be eligible for Measure I reimbursement or credit. CITY/COUNTY agrees that it will only request reimbursement or credit for eligible PROJECT-specific work activities and that reimbursement/ credit will occur based on timelines governed by the policies pertaining to Advance Expenditure Agreements in the Measure I 2010-2040 Strategic Plan Policies 40002 or 40011, as applicable.
2. To abide by all SANBAG, State and, if applicable, Federal policies, regulations, and procedures pertaining to the PROJECT, including policies pertaining to the PROJECT in the Measure I 2010-2040 Strategic Plan.
3. To prepare and submit to SANBAG an original and two copies of signed invoices for reimbursement or credit of those eligible PROJECT expenses according to the requirements specified in Attachment A. CITY/COUNTY further agrees and understands that SANBAG will not reimburse or credit CITY/COUNTY for any PROJECT expenditures that are not described in the PROJECT-specific work activities or that are in excess of the amount specified in Article 1 of section I. Invoices shall be provided to SANBAG when credit is requested by the CITY/COUNTY as well as for direct reimbursement.
4. To repay to SANBAG any reimbursement for Measure I costs that are determined by subsequent audit to be unallowable within thirty (30) days of CITY/COUNTY receiving notice of audit findings. Should CITY/COUNTY fail to reimburse moneys due SANBAG within (30) days of demand, or within such other period as may be agreed between both parties hereto, SANBAG reserves the right to withhold future payments due CITY/COUNTY from any source under SANBAG's control.
5. That the \_\_% share of funding for which CITY/COUNTY is responsible will come from CITY/COUNTY's development impact fees or other source of development contribution as required by the Development Mitigation Nexus Study (Appendix K of the SANBAG Congestion Management Program – CMP) and Appendix J of the CMP or from a loan of funds to the CITY/COUNTY's development impact fee account.

6. (This paragraph applies only if the project is an interchange with development mitigation responsibility shared among two or more jurisdictions) To execute and maintain a development mitigation cooperative agreement with \_\_\_\_\_ for its share of development mitigation as required by the SANBAG Measure I 2010-2040 Strategic Plan, and to be responsible for collecting the development mitigation based on that agreement, where applicable.
7. To maintain all source documents, books and records connected with its performance under this Agreement for a minimum of five (5) years from the date of the Final Report of Expenditures submittal to SANBAG or until audit resolution is achieved, whichever is later, and to make all such supporting information available for inspection and audit by representatives of SANBAG. Copies will be made and furnished by CITY/COUNTY upon request.
8. To establish and maintain an accounting system conforming to Generally Accepted Accounting Principles (GAAP) to support CITY/COUNTY request for reimbursement, payment vouchers, or invoices which segregate and accumulate costs of PROJECT work elements and produce monthly reports which clearly identify reimbursable costs, matching fund costs, indirect cost allocation (based on an approved indirect cost allocation plan), and other allowable expenditures by CITY/COUNTY.
9. To prepare a Final Report of Expenditures, including a final invoice reporting the actual eligible PROJECT costs expended for those activities described in the work activities, and to submit that Report and invoice no later than 60 days following the completion of those expenditures. The Final Report of Expenditures, an original and two copies of which report shall be submitted to SANBAG, must state that these PROJECT funds were used in conformance with this Agreement and for those PROJECT-specific work activities described.
10. To have a PROJECT-specific audit completed by SANBAG, at SANBAG's option, or an audit as described in Section I Article 4 upon completion of the PROJECT. The audit must state that all funds expended on the PROJECT were used in conformance with this Agreement.
11. To include SANBAG in Project Development Team (PDT) meetings and related communications on project progress and to provide at least quarterly schedule updates to SANBAG. SANBAG contact shall be \_\_\_\_\_(title).
12. To post signs when PROJECT begins construction at the boundaries of the PROJECT noting that PROJECT is funded with Measure I funds. Signs shall bear the logos of San Bernardino Associated Governments and CITY/COUNTY of \_\_\_\_\_.

### SECTION III

#### IT IS MUTUALLY AGREED:

1. SANBAG's financial responsibility shall not exceed \_\_\_\_% of eligible expenditures as listed in Attachment A.
2. Eligible PROJECT reimbursements shall include only those costs incurred by CITY/COUNTY for PROJECT-specific work activities that are described in this Agreement and shall not include escalation, interest, or other fees.
3. Neither SANBAG nor any officer or employee thereof is responsible for any injury, damage or liability occurring or arising by reason of anything done or omitted to be done by CITY/COUNTY in connection with the PROJECT or under or in connection with any work, authority or jurisdiction delegated to CITY/COUNTY under this Agreement. It is understood and agreed that, pursuant to Government Code Section 895.4, CITY/COUNTY shall fully defend, indemnify and save harmless SANBAG, its officers and employees from all claims, suits or actions of every name, kind and description brought for or on account of injury (as defined by Government Code Section 810.8) or damage occurring by reason of anything done or omitted to be done by CITY/COUNTY under or in connection with any work, authority or jurisdiction delegated to CITY/COUNTY under this Agreement.
4. This Agreement is expressly subordinated to any bonds, notes, certificates or other evidences of indebtedness as are now outstanding or as may hereafter be issued by SANBAG.
5. This Agreement will be considered terminated upon reimbursement of eligible costs by SANBAG. The Agreement may also be terminated by SANBAG, in its sole discretion, in the event contracts for the project work described in Attachment A have not been let by CITY/COUNTY within twenty-four (24) months of the date of execution of this Agreement.
6. The terms of this Agreement represent the consent of the CITY/COUNTY to provide the full development share for the PROJECT required by the SANBAG Nexus Study and that failure to contribute the development share according to the terms of this agreement does not obligate SANBAG to provide supplemental funds or otherwise remedy that failure. SANBAG may terminate or modify this agreement if the CITY/COUNTY fails to perform according to the terms of this Agreement and if this failure jeopardizes the delivery of the PROJECT according to the terms herein.

**San Bernardino County**  
**Transportation Authority**

**CITY/COUNTY of**

By: \_\_\_\_\_

President, SANBAG Board of  
Directors

Date: \_\_\_\_\_

APPROVED AS TO FORM AND  
PROCEDURE:

By: \_\_\_\_\_

Jean-Rene Basle  
SANBAG County Counsel

Date: \_\_\_\_\_

By: \_\_\_\_\_

Mayor

Date: \_\_\_\_\_

APPROVED AS TO FORM AND  
PROCEDURE:

By: \_\_\_\_\_

CITY/COUNTY Attorney

Date: \_\_\_\_\_

**Attachment A**

**(Project Description)**

**Project Scope, Cost, and Schedule**

**Proposed Project Work:**

**Summary of Project Costs (Estimate):**

**Total Project Cost    \$**

**Proposed Project Schedule (milestone delivery dates):**